

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

U.S. ETHERNET INNOVATIONS, LLC,

Plaintiff,

v.

ACER, INC., et al.,

Defendants,

and

ATHEROS COMMUNICATIONS, INC., et al.,

Intervenors.

No. C 10-3724 CW

ORDER ON  
ADMINISTRATIVE  
MOTIONS TO SEAL

(Docket Nos.  
1296, 1305, 1306  
and 1309)

U.S. ETHERNET INNOVATIONS, LLC,

Plaintiff,

v.

AT&T MOBILITY, LLC, et al.,

Defendants,

and

ATHEROS COMMUNICATIONS, INC., et al.,

Intervenors.

No. C 10-5254 CW

ORDER ON  
ADMINISTRATIVE  
MOTIONS TO SEAL

(Docket Nos. 574,  
575 and 576)

Before the Court are numerous administrative motions to seal  
filed by multiple parties.

Under Civil Local Rule 79-5, a document may be filed under  
seal only if a party establishes that the portions sought to be  
sealed "are privileged, protectable as a trade secret or otherwise

1 entitled to protection under the law." Civ. L.R. 79-5(b). Any  
2 sealing request must be narrowly tailored to cover only sealable  
3 material. Id. The request must be supported by the designating  
4 party's declaration establishing that the information is sealable.  
5 Id. subsection (d).

6 "Historically, courts have recognized a 'general right to  
7 inspect and copy public records and documents, including judicial  
8 records and documents.'" Kamakana v. City & Cnty. of Honolulu,  
9 447 F.3d 1172, 1178 (9th Cir. 2006). In considering a sealing  
10 request, the Court begins with "a strong presumption of access  
11 [as] the starting point." Id.

12 A party seeking to seal records attached to a dispositive  
13 motion bears the burden of establishing "compelling reasons  
14 supported by specific factual findings that outweigh the general  
15 history of access and the public policies favoring disclosure."  
16 Id. at 1178-79. This is because dispositive motions represent  
17 "the heart of the interest in ensuring the public's understanding  
18 of the judicial process and of significant public events." Id.  
19 at 1179.

20 The strong presumption in favor of access does not apply with  
21 equal force to non-dispositive motions, which may be only  
22 "tangentially related" to the underlying cause of action. Id.  
23 at 1179-80. A party seeking to seal materials related to non-  
24 dispositive motions must show good cause by making a  
25 "particularized showing" that "specific prejudice or harm will  
26 result" should the information be disclosed. Id.; Fed. R. Civ. P.  
27 26(c). "[B]road, conclusory allegations of potential harm" will  
28 not suffice. Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d

1122, 1131 (9th Cir. 2003). These different standards are applied as relevant to the documents addressed below.

The Court provides the following rulings on the parties' motions to seal, as articulated in the table below.

Case No. 10-3724

Docket No.	Ruling
1296  (575 in 10-5254)	<p>Intervenor Intel seeks permission to file under seal unredacted versions of Exhibit 15, and certain attachments to that exhibit, to the Declaration of Sean Nation in support of Plaintiff USEI's Notice of Supplemental Authority and Motion to Supplement.</p> <p>1. Exhibit 15 is USEI's Supplemental Expert's Report regarding damages and exhibits for the various Defendants and Intervenor. The redacted portions of this document contain confidential sales information of Defendants and Intervenor. It also contains information regarding a confidential business agreement.</p> <p>2. The redacted portions of the accompanying exhibits to Exhibit 15 contain highly specific and recent financial information regarding sales about each of the Defendants and Intervenor.</p> <p>All Defendants and Intervenor have filed declarations in support of this request. The motion to file under seal unredacted versions of these</p>

1		documents is GRANTED because the request is
2		associated with a non-dispositive motion and because
3		Intel and the declarants have limited the redacted
4		information to confidential information only (Case
5		No. 10-3724, Docket No. 1296 and Case No. 10-5254,
6		Docket No. 575). For those documents for which the
7		request to file under seal was granted, within four
8		days of the date of this Order, Intel shall
9		electronically file under seal unredacted versions
10		of these documents, and shall file redacted versions
11		of these documents in the public record.
12		
13	1305	Intervenor Intel moves to file under seal all or
14		parts of the following documents in connection with
15	(576 in	Intervenors' and Defendants' Motions for Summary
16	10-5254)	Judgment and Opposition to Plaintiff's Dispositive
17		Motions:
18		1. The Motion and Opposition itself. The redacted
19		portions of these documents contain references
20		to confidential business agreements, detailed
21		sales information and product specifications.
22		The motion to file under seal unredacted
23		versions of these documents is GRANTED because
24		Intel limits the redacted material to
25		confidential information only.
26		2. Exhibits 1, 8, 10, 11, 16, 17, 20, 34-40 and
27		63-65 to the Constant Declaration. Intel
28		

represents that USEI has designated these documents as confidential, but there appears to be no declaration from USEI as to why these documents should be filed under seal.

Accordingly, with regard to these documents, the motion is DENIED. Within seven days, USEI must file a declaration justifying why these documents are sealable. If USEI fails to do so, unredacted versions of these documents must be filed in the public record.

3. Exhibits 2-7, 9, 12-14, 21, 23, 25, 27, 29-32, 53 and 55-58 to the Constant Declaration.

These documents comprise excerpts of other documents and contain confidential technical, financial and/or business information. The motion to file these documents under seal, in their entirety, is GRANTED because the documents contain only confidential information.

Intervenor Intel also moves to file under seal:

4. Exhibit 29 to the Justin L. Constant Declaration in Support of its Motion for Administrative Relief to Seal Confidential Information. This document is an excerpt of the deposition of Reid Kells, an Intel employee. The redacted portions of this document refer to confidential customer lists,

business practices and testing procedures. The motion to file under seal an unredacted version of this document is GRANTED because the request is associated with a non-dispositive declaration and because Intel limits the redacted material to confidential information only.

Intervenor Intel moves to file under seal all or parts of the following documents in connection with USEI's Notice of Supplemental Authority and Motion to Supplement:

5. Exhibit 1 to the Declaration of Sean Nation in Support of USEI's Notice of Supplemental Authority and Motion to Supplement (Nation Declaration). This document is the Expert's Report of Dr. Michael Mitzenmacher, USEI's infringement expert, and accompanying exhibits regarding alleged infringement by Intervenor Intel. The unredacted version of this document is filed under seal at Docket Nos. 1238-3 and 1238-4. In Docket No. 1305, Intel has filed this document in six parts.

a. Part One is the Base Report. The redacted portions of this document contain confidential source code and internal documentation. The motion to file under seal an unredacted version of this

document is GRANTED because the request is associated with a non-dispositive motion and because Intel limits the redacted material to confidential information only.

b. Parts Two through Six comprise Dr. Mitzenmacher's resume and the patent applications for the patents-in-suit. There does not appear to be any sealable information in this document. Accordingly, the motion to file under seal, with regards to this document, is DENIED.

6. Exhibit 2 to the Nation Declaration. This document is the Corrected Expert Report of Dr. Michael Mitzenmacher, USEI's Infringement Expert, for Intervenor Intel. The unredacted version of this document is filed under seal at Docket Nos. 1238-5 and 1238-6. In Docket Nos. 1305-10 and 1306-11, Intel has filed this document in two parts. The redacted portions of both of these documents contain confidential source code, descriptions of confidential source code and internal documentation. The motion to file under seal an unredacted version of this document is GRANTED because the request is associated with a non-dispositive motion and because Intel limits the redacted material to

confidential information only.

7. Exhibit 11 of the Nation Declaration. This document is the Supplemental Expert Report of Dr. Michael Mitzenmacher, USEI's Infringement Expert, for Intervenor Intel. The unredacted version of this document is filed under seal at Docket No. 1238-13. The redacted portions of this document contain confidential source code. The motion to file under seal an unredacted version of this document is GRANTED because the request is associated with a non-dispositive motion and because Intel limits the redacted material to confidential information only.

8. Exhibit 14 to the Justin L. Constant Declaration in support of Intervenor's and Defendants' Opposition to USEI's Motion to Supplement the Record and for Leave to Serve Supplemental Reports (Constant Declaration). Exhibit 14 is the First Supplemental Expert Report of Walter Bratic, USEI's Damages Expert. The redacted portions of this document contain confidential details regarding a commercial agreement between Intel, 3Com, and Xircom. The motion to file under seal an unredacted version of this document is GRANTED because the request is associated with a non-dispositive motion and because Intel limits the redacted material to



only confidential information.

9. Exhibit 15 to the Constant Declaration.

Exhibit 15 is the Second Supplemental Expert Report of Walter Bratic, USEI's Damages Expert. This document contains confidential details regarding a commercial agreement between Intel, 3Com, and Xircom and contains confidential sales information. The motion to file under seal an unredacted version of this document is GRANTED because the request is associated with a non-dispositive motion and because Intel limits the redacted material to only confidential information.

Accordingly, Intel's motion to seal is GRANTED in part and DENIED in part, as set forth above (Case No. 10-3724, Docket No. 1305; Case No. 10-5254, Docket No. 576). For those documents for which the request to file under seal was granted, within four days of the date of this Order, Intel shall electronically file under seal unredacted versions of these documents, and shall file redacted versions of these documents in the public record. For those documents for which the motion to file under seal is denied, the denials are without prejudice. Intel must submit, within seven days, a revised declaration remedying the deficiencies above. For those documents designated as confidential by

1		another party, the designating party must file,
2		within four days of the date of this Order, a
3		declaration justifying why the document is sealable.
4		Any document for which these requirements are not
5		met must be filed in the public record.
6		
7	1306	Intervenor Atheros moves to file under seal all or
8		part of the following documents in support of
9		Intervenors' and Defendants' Motions for Summary
10		Judgment and Opposition to Plaintiff's Dispositive
11		Motions:
12		1. Exhibit 1 to the Declaration of John W.
13		McCauley (McCauley Declaration). Exhibit 1 is
14		the Rebuttal Report of Dr. Bill Lin. The
15		redacted portions of this document contain
16		confidential source code. The motion to file
17		under seal an unredacted version of this
18		document is GRANTED because Atheros limits the
19		redacted material to confidential information
20		only.
21		2. Exhibit 2 to the McCauley Declaration. Exhibit
22		2 is the Expert Witness Report of Dr. Michael
23		Mitzenmacher Regarding Infringement of the '313
24		Patent by Atheros. The redacted portions of
25		this document contain confidential source code.
26		The motion to file under seal an unredacted
27		version of this document is GRANTED because
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Atheros limits the redacted material to confidential information only.

Intervenor Atheros also moves to file under seal all or part of the following documents in support of Intervenor's and Defendants' Opposition to USEI's Motion to Supplement the Record and for Leave to Serve Supplemental Reports:

3. Exhibit 1 to the Declaration of John W.

McCauley (McCauley Declaration). Exhibit 1 is the Rebuttal Report of Dr. Bill Lin. The redacted portions of this document contain confidential source code. The motion to file under seal an unredacted version of this document is GRANTED because the document is filed in connection with a non-dispositive motion and because Atheros limits the redacted material to confidential information only.

4. Exhibit 5 to the McCauley Declaration is the

Expert Witness Report of Dr. Michael Mitzenmacher Regarding Infringement of the '313 Patent by Atheros. The redacted portions of this document contain confidential source code. The motion to file under seal an unredacted version of this document is GRANTED because the document is filed in connection with a non-dispositive motion and because Atheros limits the redacted material to only confidential

1		information.
2		5. Exhibit 13 to the Declaration of D. Sean Nation
3		in support of Plaintiff's Motion to Supplement
4		the Record and Notice of Supplemental
5		Authority. The redacted portions of Exhibit 13
6		contain confidential source code. The motion
7		to file under seal an unredacted version this
8		document is GRANTED because the document is
9		filed in connection with a non-dispositive
10		motion and because Atheros limits the redacted
11		material to confidential information only.
12		Accordingly, Intervenor Atheros's motion to seal is
13		GRANTED (Docket No. 1306). Within four days of the
14		date of this Order, Atheros shall electronically
15		file under seal unredacted versions of these
16		documents, and shall file redacted versions of these
17		documents in the public record.
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19	1309	Intervenor Marvell (MSI) moves to file under seal
20		all or part of the following documents in support of
21		Intervenors' and Defendants' Motions for Summary
22		Judgment and Opposition to Plaintiff's Dispositive
23		Motions:
24		1. Exhibit 66 is MSI's Supplemental Objections and
25		Responses to USEI's First Set of
26		Interrogatories (Nos. 1- 13). This document
27		was previously sealed, but in connection with a
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1 non-dispositive motion (Docket No. 1220). In  
2 its December 1, 2014 Order, the Court denied  
3 MSI's motion to seal this document because the  
4 request was filed in connection with a  
5 dispositive motion and was not narrowly  
6 tailored as required by Civil Local Rule 79-  
7 5(b). However, in Docket No. 1261, MSI's  
8 request to file under seal an unredacted  
9 version of this document was narrowly tailored,  
10 and that request was granted, albeit in  
11 connection with a non-dispositive motion. In  
12 any case, MSI may file, in the public record,  
13 the redacted version of this document as it  
14 appears in Docket No. 1261 because MSI limits  
15 the redacted material to confidential source  
16 code information only.

17 2. Exhibit 68 is MSI's Objections and Responses to  
18 USEI's First Requests for Admission (Nos. 1-  
19 55). The redacted portions of this document  
20 describe the proprietary structure and  
21 operation of the accused Yukon Ethernet  
22 Controllers. The motion to file under seal an  
23 unredacted version of this document is GRANTED  
24 because MSI limits the redacted material to  
25 confidential information only.

26 Intervenor MSI also moves to file under seal all or  
27 part of the following documents filed in connection  
28

1 with USEI's Notice of Supplemental Authority and  
2 Motion to Supplement:

3 3. Exhibit 4 is the Expert Witness Report of Dr.  
4 Michael Mitzenmacher regarding Infringement by  
5 MSI. The redacted portions of this document  
6 contain confidential source code. The motion  
7 to file seal an unredacted version of this  
8 document is GRANTED because the document is  
9 filed in connection with a non-dispositive  
10 motion and MSI limits the redacted material to  
11 confidential information only.

12 4. Exhibit 12 is the Supplemental Expert Witness  
13 Report of Dr. Michael Mitzenmacher regarding  
14 Infringement by MSI. The redacted portions of  
15 this document contain confidential source code.  
16 The motion to file under seal an unredacted  
17 version of this document is GRANTED because the  
18 document is filed in connection with a non-  
19 dispositive motion and MSI limits the redacted  
20 material to confidential information only.

21 5. Exhibit 15 is the Supplemental Expert Witness  
22 Report of Walter Bratic, USEI's damages expert.  
23 Exhibits K1-K3 of this document contain MSI's  
24 confidential financial information. USEI  
25 previously moved to file this document under  
26 seal (Docket No. 1238). That request was  
27 denied for failure to comply with Civil Local  
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1 Rule 79-5(b), which requires that requests to  
2 seal be narrowly tailored. MSI has not filed,  
3 in connection with this motion, a narrowly  
4 tailored request that seeks to seal  
5 confidential information only. Accordingly,  
6 the motion to file this document under seal is  
7 DENIED. MSI may resubmit a modified and  
8 narrowly tailored version of this sealing  
9 request no later than seven days from the date  
10 of this order. If it does not do so, the  
11 document must be filed in the public record.  
12 Accordingly, MSI's motion to seal is GRANTED in part  
13 and DENIED in part, as set forth above (Docket No.  
14 1309). For those documents for which the request to  
15 file under seal was granted, within four days of the  
16 date of this Order, MSI shall electronically file  
17 under seal unredacted versions of these documents,  
18 and shall file redacted versions of these documents  
19 in the public record. For those documents for which  
20 the motion to file under seal is denied, the denial  
21 is without prejudice. MSI must submit, within seven  
22 days of the date of this Order, a revised  
23 declaration remedying the deficiencies above. Any  
24 document for which these requirements are not met  
25 must be filed in the public record.  
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Case No. 10-5254

574	<p>Defendant AT&amp;T Services (ATTS) moves to file under seal an excerpt from the transcript of Walter Bratic's June 10-11, 2014 Deposition filed in support of Intervenor's' and Defendants' Motions for Summary Judgment. The redacted portions of the excerpt contain confidential sales and financial information of ATTS. The motion to file under seal an unredacted version of this document is GRANTED (Docket No. 574) because ATTS limits the redacted material to confidential information. Within four days of the date of this Order, ATTS shall electronically file under seal an unredacted version of this document, and shall file a redacted version of this document in the public record.</p>
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#### CONCLUSION

For the reasons set forth above, Intervenor Intel's motion to file under seal unredacted versions of USEI's Supplemental Expert's Report regarding damages, and its accompanying exhibits, is GRANTED (Case No. 10-3724, Docket No. 1296; Case No. 10-5254, Docket No. 575); Intervenor Intel's motion to file under seal various documents associated with Intervenor's' and Defendants' Motions for Summary Judgment and Opposition to Plaintiff's Dispositive Motion, and USEI's Notice of Supplemental Authority and Motion to Supplement, is GRANTED in part and DENIED in part (Case No. 10-3724, Docket No. 1305; Case No. 10-5254, Docket No.



1 576); Intervenor Atheros's motion to seal is GRANTED (Case No. 10-  
2 3724, Docket No. 1306); Intervenor MSI's motion to seal is GRANTED  
3 in part and DENIED in part (Case No. 10-3724, Docket No. 1309);  
4 and Intervenor ATTS's motion to seal is GRANTED (Case No. 10-5254,  
5 Docket No. 574).

6 As noted above, for the documents for which the motion to  
7 seal has been granted, within four days of the date of this Order,  
8 the parties shall file under seal the unredacted versions of those  
9 documents, and file redacted versions of these documents in the  
10 public record.

11 With regard to those documents where the motion to file under  
12 seal was denied, the denials are without prejudice. The party  
13 requesting sealing must submit, within seven days, a revised  
14 declaration remedying the deficiencies noted above. If the  
15 document has been designated confidential by a party other than  
16 the party requesting sealing, the requesting party must also  
17 provide proof of service on the designating party. The  
18 designating party must file, within four days of receiving notice,  
19 a declaration justifying why the document is sealable. Any  
20 document for which these requirements are not met must be filed in  
21 the public record if the designating party has not justified  
22 sealing, or if the deficiencies noted above are not remedied.

23 IT IS SO ORDERED.

24 Dated: December 19, 2014

  
25 CLAUDIA WILKEN  
26 United States District Judge  
27  
28